



# House of Representatives

General Assembly

**File No. 956**

*January Session, 2009*

Substitute House Bill No. 6097

*House of Representatives, May 14, 2009*

The Committee on Appropriations reported through REP. GERAGOSIAN of the 25th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***AN ACT CONCERNING BROWNFIELDS DEVELOPMENT PROJECTS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (d) of section 25-68d of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective July*  
3 *1, 2009*):

4 (d) Any state agency proposing an activity or critical activity within  
5 or affecting the floodplain may apply to the commissioner for  
6 exemption from the provisions of subsection (b) of this section. Such  
7 application shall include a statement of the reasons why such agency is  
8 unable to comply with said subsection and any other information the  
9 commissioner deems necessary. The commissioner, at least thirty days  
10 before approving, approving with conditions or denying any such  
11 application, shall publish once in a newspaper having a substantial  
12 circulation in the affected area notice of: (1) The name of the applicant;  
13 (2) the location and nature of the requested exemption; (3) the tentative  
14 decision on the application; and (4) additional information the

15 commissioner deems necessary to support the decision to approve,  
16 approve with conditions or deny the application. There shall be a  
17 comment period following the public notice during which period  
18 interested persons and municipalities may submit written comments.  
19 After the comment period, the commissioner shall make a final  
20 determination to either approve the application, approve the  
21 application with conditions or deny the application. The commissioner  
22 may hold a public hearing prior to approving, approving with  
23 conditions or denying any application if in the discretion of the  
24 commissioner the public interest will be best served thereby, and the  
25 commissioner shall hold a public hearing upon receipt of a petition  
26 signed by at least twenty-five persons. Notice of such hearing shall be  
27 published at least thirty days before the hearing in a newspaper  
28 having a substantial circulation in the area affected. The commissioner  
29 may approve or approve with conditions such exemption if the  
30 commissioner determines that (A) the agency has shown that the  
31 activity or critical activity is in the public interest, will not injure  
32 persons or damage property in the area of such activity or critical  
33 activity, complies with the provisions of the National Flood Insurance  
34 Program, and, in the case of a loan or grant, the recipient of the loan or  
35 grant has been informed that increased flood insurance premiums may  
36 result from the activity or critical activity. An activity shall be  
37 considered to be in the public interest if it is a development subject to  
38 environmental remediation regulations adopted pursuant to section  
39 22a-133k and is in or adjacent to an area identified as a regional center,  
40 neighborhood conservation area, growth area or rural community  
41 center in the State Plan of Conservation and Development pursuant to  
42 chapter 297, [or] (B) in the case of a flood control project, such project  
43 meets the criteria of subparagraph (A) of this subdivision and is more  
44 cost-effective to the state and municipalities than a project constructed  
45 to or above the base flood or base flood for a critical activity, or (C) the  
46 proposal is a change in land use of real property subject to  
47 environmental remediation requirements adopted pursuant to section  
48 22a-133k that is not considered an intensive use. Reuse of mills and  
49 other brownfields, as defined in section 32-9kk, shall not require an

50 exemption from floodplain management certification provided the  
51 project renovates an existing structure or structures or the footprint of  
52 new construction does not exceed the historic footprint of the former  
53 structure on the brownfield, any residential living space is above the  
54 five hundred year flood elevations, and such renovation complies with  
55 the provisions of the National Flood Insurance Program. Following  
56 approval for exemption for a flood control project, the commissioner  
57 shall provide notice of the hazards of a flood greater than the capacity  
58 of the project design to each member of the legislature whose district  
59 will be affected by the project and to the following agencies and  
60 officials in the area to be protected by the project: The planning and  
61 zoning commission, the inland wetlands agency, the director of civil  
62 defense, the conservation commission, the fire department, the police  
63 department, the chief elected official and each member of the  
64 legislative body, and the regional planning agency. Notice shall be  
65 given to the general public by publication in a newspaper of general  
66 circulation in each municipality in the area in which the project is to be  
67 located.

68 Sec. 2. Subdivision (1) of section 22a-134 of the general statutes is  
69 repealed and the following is substituted in lieu thereof (*Effective from*  
70 *passage*):

71 (1) "Transfer of establishment" means any transaction or proceeding  
72 through which an establishment undergoes a change in ownership, but  
73 does not mean:

74 (A) Conveyance or extinguishment of an easement;

75 (B) Conveyance of an establishment through the exercise of eminent  
76 domain by a municipality, a foreclosure, as defined in subsection (b) of  
77 section 22a-452f or foreclosure of a municipal tax lien or through a tax  
78 warrant sale pursuant to section 12-157 or [, provided the  
79 establishment is within the pilot program established in subsection (c)  
80 of section 32-9cc,] a subsequent transfer by such municipality that has  
81 acquired the property through the exercise of eminent domain,  
82 foreclosed municipal tax liens or that has acquired title to the property

83 through section 12-157, provided (i) the party acquiring the property  
84 from the municipality did not establish or create the condition at the  
85 establishment and is not affiliated with such responsible person, and  
86 (ii) the establishment enters or remains in one of the voluntary  
87 remediation programs administered by the commissioner. For  
88 purposes of this section, municipality includes any entity created or  
89 operating under chapter 130 or 132;

90 (C) Conveyance of a deed in lieu of foreclosure to a lender, as  
91 defined in and that qualifies for the secured lender exemption  
92 pursuant to subsection (b) of section 22a-452f;

93 (D) Conveyance of a security interest, as defined in subdivision (7)  
94 of subsection (b) of section 22a-452f;

95 (E) Termination of a lease and conveyance, assignment or execution  
96 of a lease for a period less than ninety-nine years including  
97 conveyance, assignment or execution of a lease with options or similar  
98 terms that will extend the period of the leasehold to ninety-nine years,  
99 or from the commencement of the leasehold, ninety-nine years,  
100 including conveyance, assignment or execution of a lease with options  
101 or similar terms that will extend the period of the leasehold to ninety-  
102 nine years, or from the commencement of the leasehold;

103 (F) Any change in ownership approved by the Probate Court;

104 (G) Devolution of title to a surviving joint tenant, or to a trustee,  
105 executor or administrator under the terms of a testamentary trust or  
106 will, or by intestate succession;

107 (H) Corporate reorganization not substantially affecting the  
108 ownership of the establishment;

109 (I) The issuance of stock or other securities of an entity which owns  
110 or operates an establishment;

111 (J) The transfer of stock, securities or other ownership interests  
112 representing less than forty per cent of the ownership of the entity that

113 owns or operates the establishment;

114 (K) Any conveyance of an interest in an establishment where the  
115 transferor is the sibling, spouse, child, parent, grandparent, child of a  
116 sibling or sibling of a parent of the transferee;

117 (L) Conveyance of an interest in an establishment to a trustee of an  
118 inter vivos trust created by the transferor solely for the benefit of one  
119 or more siblings, spouses, children, parents, grandchildren, children of  
120 a sibling or siblings of a parent of the transferor;

121 (M) Any conveyance of a portion of a parcel upon which portion no  
122 establishment is or has been located and upon which there has not  
123 occurred a discharge, spillage, uncontrolled loss, seepage or filtration  
124 of hazardous waste, provided either the area of such portion is not  
125 greater than fifty per cent of the area of such parcel or written notice of  
126 such proposed conveyance and an environmental condition  
127 assessment form for such parcel is provided to the commissioner sixty  
128 days prior to such conveyance;

129 (N) Conveyance of a service station, as defined in subdivision (5) of  
130 this section;

131 (O) Any conveyance of an establishment which, prior to July 1, 1997,  
132 had been developed solely for residential use and such use has not  
133 changed;

134 (P) Any conveyance of an establishment to any entity created or  
135 operating under chapter 130 or 132, or to an urban rehabilitation  
136 agency, as defined in section 8-292, or to a municipality under section  
137 32-224, or to the Connecticut Development Authority or any  
138 subsidiary of the authority;

139 (Q) Any conveyance of a parcel in connection with the acquisition of  
140 properties to effectuate the development of the overall project, as  
141 defined in section 32-651;

142 (R) The conversion of a general or limited partnership to a limited

143 liability company under section 34-199;

144 (S) The transfer of general partnership property held in the names of  
145 all of its general partners to a general partnership which includes as  
146 general partners immediately after the transfer all of the same persons  
147 as were general partners immediately prior to the transfer;

148 (T) The transfer of general partnership property held in the names  
149 of all of its general partners to a limited liability company which  
150 includes as members immediately after the transfer all of the same  
151 persons as were general partners immediately prior to the transfer;

152 (U) Acquisition of an establishment by any governmental or quasi-  
153 governmental condemning authority;

154 (V) Conveyance of any real property or business operation that  
155 would qualify as an establishment solely as a result of (i) the  
156 generation of more than one hundred kilograms of universal waste in  
157 a calendar month, (ii) the storage, handling or transportation of  
158 universal waste generated at a different location, or (iii) activities  
159 undertaken at a universal waste transfer facility, provided any such  
160 real property or business operation does not otherwise qualify as an  
161 establishment; there has been no discharge, spillage, uncontrolled loss,  
162 seepage or filtration of a universal waste or a constituent of universal  
163 waste that is a hazardous substance at or from such real property or  
164 business operation; and universal waste is not also recycled, treated,  
165 except for treatment of a universal waste pursuant to 40 CFR  
166 273.13(a)(2) or (c)(2) or 40 CFR 273.33 (a)(2) or (c)(2), or disposed of at  
167 such real property or business operation; or

168 (W) Conveyance of a unit in a residential common interest  
169 community in accordance with section 22a-134i.

170 Sec. 3. Section 32-23zz of the general statutes is repealed and the  
171 following is substituted in lieu thereof (*Effective July 1, 2009*):

172 (a) For the purpose of assisting (1) any information technology  
173 project, as defined in subsection (ee) of section 32-23d, which is located

174 in an eligible municipality, as defined in subdivision (12) of subsection  
175 (a) of section 32-9t, or (2) any remediation project, as defined in  
176 subsection (ii) of section 32-23d, the Connecticut Development  
177 Authority may, upon a resolution of the legislative body of a  
178 municipality, issue and administer bonds which are payable solely or  
179 in part from and secured by: (A) A pledge of and lien upon any and all  
180 of the income, proceeds, revenues and property of such a project,  
181 including the proceeds of grants, loans, advances or contributions from  
182 the federal government, the state or any other source, including  
183 financial assistance furnished by the municipality or any other public  
184 body, (B) taxes or payments or grants in lieu of taxes allocated to and  
185 payable into a special fund of the Connecticut Development Authority  
186 pursuant to the provisions of subsection (b) of this section, or (C) any  
187 combination of the foregoing. Any such bonds of the Connecticut  
188 Development Authority shall mature at such time or times not  
189 exceeding thirty years from their date of issuance and shall be subject  
190 to the general terms and provisions of law applicable to the issuance of  
191 bonds by the Connecticut Development Authority, except that such  
192 bonds shall be issued without a special capital reserve fund as  
193 provided in subsection (b) of section 32-23j and, for purposes of section  
194 32-23f, only the approval of the board of directors of the authority shall  
195 be required for the issuance and sale of such bonds. Any pledge made  
196 by the municipality or the Connecticut Development Authority for  
197 bonds issued as provided in this section shall be valid and binding  
198 from the time when the pledge is made, and revenues and other  
199 receipts, funds or moneys so pledged and thereafter received by the  
200 municipality or the Connecticut Development Authority shall be  
201 subject to the lien of such pledge without any physical delivery thereof  
202 or further act. The lien of such pledge shall be valid and binding  
203 against all parties having claims of any kind in tort, contract or  
204 otherwise against the municipality or the Connecticut Development  
205 Authority, even if the parties have no notice of such lien. Recording of  
206 the resolution or any other instrument by which such a pledge is  
207 created shall not be required. In connection with any such assignment  
208 of taxes or payments in lieu of taxes, the Connecticut Development

209 Authority may, if the resolution so provides, exercise the rights  
210 provided for in section 12-195h of an assignee for consideration of any  
211 lien filed to secure the payment of such taxes or payments in lieu of  
212 taxes. All expenses incurred in providing such assistance may be  
213 treated as project costs.

214 (b) Any proceedings authorizing the issuance of bonds under this  
215 section may contain a provision that taxes or a specified portion  
216 thereof, if any, identified in such authorizing proceedings and levied  
217 upon taxable real or personal property, or both, in a project each year,  
218 or payments or grants in lieu of such taxes or a specified portion  
219 thereof, by or for the benefit of any one or more municipalities,  
220 districts or other public taxing agencies, as the case may be, shall be  
221 divided as follows: (1) In each fiscal year that portion of the taxes or  
222 payments or grants in lieu of taxes which would be produced by  
223 applying the then current tax rate of each of the taxing agencies to the  
224 total sum of the assessed value of the taxable property in the project on  
225 the date of such authorizing proceedings, adjusted in the case of grants  
226 in lieu of taxes to reflect the applicable statutory rate of  
227 reimbursement, shall be allocated to and when collected shall be paid  
228 into the funds of the respective taxing agencies in the same manner as  
229 taxes by or for said taxing agencies on all other property are paid; and  
230 (2) that portion of the assessed taxes or the payments or grants in lieu  
231 of taxes, or both, each fiscal year in excess of the amount referred to in  
232 subdivision (1) of this subsection shall be allocated to and when  
233 collected shall be paid into a special fund of the Connecticut  
234 Development Authority to be used in each fiscal year, in the discretion  
235 of the Connecticut Development Authority, to pay the principal of and  
236 interest due in such fiscal year on bonds issued by the Connecticut  
237 Development Authority to finance, refinance or otherwise assist such  
238 project, to purchase bonds issued for such project, or to reimburse the  
239 provider of or reimbursement party with respect to any guarantee,  
240 letter of credit, policy of bond insurance, funds deposited in a debt  
241 service reserve fund, funds deposited as capitalized interest or other  
242 credit enhancement device used to secure payment of debt service on  
243 any bonds issued by the Connecticut Development Authority to



244 finance, refinance or otherwise assist such project, to the extent of any  
245 payments of debt service made therefrom. Unless and until the total  
246 assessed valuation of the taxable property in a project exceeds the total  
247 assessed value of the taxable property in such project as shown by the  
248 last assessment list referred to in subdivision (1) of this subsection, all  
249 of the taxes levied and collected and all of the payments or grants in  
250 lieu of taxes due and collected upon the taxable property in such  
251 project shall be paid into the funds of the respective taxing agencies.  
252 When such bonds and interest thereof, and such debt service  
253 reimbursement to the provider of or reimbursement party with respect  
254 to such credit enhancement, have been paid in full, all moneys  
255 thereafter received from taxes or payments or grants in lieu of taxes  
256 upon the taxable property in such development project shall be paid  
257 into the funds of the respective taxing agencies in the same manner as  
258 taxes on all other property are paid. The total amount of bonds issued  
259 pursuant to this section which are payable from grants in lieu of taxes  
260 payable by the state shall not exceed an amount of bonds, the debt  
261 service on which in any state fiscal year is, in total, equal to one million  
262 dollars.

263 (c) The authority may make grants or provide loans or other forms  
264 of financial assistance from the proceeds of special or general  
265 obligation notes or bonds of the authority issued without the security  
266 of a special capital reserve fund within the meaning of subsection (b)  
267 of section 32-23j, which bonds are payable from and secured by, in  
268 whole or in part, the pledge and security provided for in section 8-134,  
269 8-192, 32-227 or this section, all on such terms and conditions,  
270 including such agreements with the municipality and the developer of  
271 the project, as the authority determines to be appropriate in the  
272 circumstances, provided any such project in an area designated as an  
273 enterprise zone pursuant to section 32-70 receiving such financial  
274 assistance shall be ineligible for any fixed assessment pursuant to  
275 section 32-71, and the authority, as a condition of such grant, loan or  
276 other financial assistance, may require the waiver, in whole or in part,  
277 of any property tax exemption with respect to such project otherwise  
278 available under subsection (59) or (60) of section 12-81.

279 (d) As used in this section, "bonds" means any bonds, including  
 280 refunding bonds, notes, temporary notes, interim certificates,  
 281 debentures or other obligations; "legislative body" has the meaning  
 282 provided in subsection (w) of section 32-222; and "municipality" means  
 283 a town, city, consolidated town or city or consolidated town and  
 284 borough.

285 (e) For purposes of this section, references to the Connecticut  
 286 Development Authority shall include any subsidiary of the  
 287 Connecticut Development Authority established pursuant to  
 288 subsection (l) of section 32-11a, and a municipality may act by and  
 289 through its implementing agency, as defined in subsection (k) of  
 290 section 32-222.

291 [(f) No commitments for new projects shall be approved by the  
 292 authority under this section on or after July 1, 2010.]

293 [(g)] (f) In the case of a remediation project, as defined in subsection  
 294 (ii) of section 32-23d, that involves buildings that are vacant,  
 295 underutilized or in deteriorating condition and as to which municipal  
 296 real property taxes are delinquent, in whole or in part, for more than  
 297 one fiscal year, the amount determined in accordance with subdivision  
 298 (1) of subsection (b) of this section may, if the resolution of the  
 299 municipality so provides, be established at an amount less than the  
 300 amount so determined, but not less than the amount of municipal  
 301 property taxes actually paid during the most recently completed fiscal  
 302 year. If the Connecticut Development Authority issues bonds for the  
 303 remediation project, the amount established in the resolution shall be  
 304 used for all purposes of subsection (a) of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2009</i>	25-68d(d)
Sec. 2	<i>from passage</i>	22a-134(1)
Sec. 3	<i>July 1, 2009</i>	32-23zz

***APP***      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

### **OFA Fiscal Note**

#### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 10 \$</b>	<b>FY 11 \$</b>
Department of Economic & Community Development	GF - Savings	150,000-300,000	150,000-300,000
CT. Development Auth. (quasi-public)	See Below - See Below	See Below	See Below

Note: GF=General Fund

**Municipal Impact:** None

#### **Explanation**

The bill would result in a savings to the Department of Economic and Community Development (DECD) associated with removing the need for DECD to apply for an exemption under DEP's floodplain management statutes. It is estimated that DECD would process approximately six exemptions per year for the reuse of mills at a cost of \$25,000-\$50,000 per application for a total savings of \$150,000-\$300,000. Costs include printing, publication, staff, and attorney fees.

Additionally, the bill allows the Connecticut Development Authority (CDA), a quasi-public agency, to permanently issue bonds on behalf of municipalities to refinance brownfield remediation and information technology projects.

#### **The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

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**OLR Bill Analysis****sHB 6097*****AN ACT CONCERNING BROWNFIELDS DEVELOPMENT PROJECTS.*****SUMMARY:**

This bill

1. extends Transfer Act exemptions to property municipalities take by eminent domain,
2. eliminates the sunset date on a Connecticut Development Authority (CDA) program that finances brownfield projects, and
3. makes it easier for state agencies to develop property in floodplains.

EFFECTIVE DATE: July 1, 2009, except that the Transfer Act exemptions take effect upon passage.

**TRANSFER ACT EXEMPTIONS**

The bill broadens the Transfer Act exemption for municipalities. The Transfer Act allows a potentially contaminated property to be sold only after the owner indicates its environmental condition and, if the property is contaminated, a party agrees to clean it up. Current law exempts municipalities from the act when they acquire tax delinquent property by foreclosing on a tax lien or through a tax warrant sale. The bill additionally exempts property municipalities or their development agencies take by eminent domain.

The bill also broadens the exemption that applies when municipalities convey these properties. The exemption currently applies only to property they acquired to recover back taxes and that

were cleaned up under DECD's Brownfields Pilot Program. The bill extends it to any property municipalities or their development agencies take by eminent domain or acquired for back taxes, regardless of whether it is being cleaned up under the pilot program.

But this exemption applies only if:

1. the party acquiring the property did not cause or contribute to the pollution and has no connection with the party that did and
2. the property is being cleaned or will be cleaned under the DEP voluntary remediation program.

### **CDA BOND FINANCING FOR MUNICIPAL BROWNFIELD PROJECTS**

The bill permanently allows CDA to issue bonds on behalf of municipalities to finance brownfield remediation and information technology projects. Municipalities must repay the bonds with property tax and other revenues. Under current law, CDA's authority to issue the bonds expires on July 1, 2010.

### **DEVELOPMENT IN FLOODPLAINS**

The bill makes it easier for state agencies to develop property in floodplains. By law, an agency must obtain the DEP commissioner's approval before transferring state-owned property in these areas or doing things that could affect land uses there. Under current law, the commissioner may approve the activity if it serves the public interest, will not harm people or property, and complies with the National Flood Insurance program. She may also approve a flood control project that meets these criteria and is more cost effective than one constructed to or above the base flood or base flood for a critical activity.

Under the bill, the commissioner can approve an activity that changes the permitted use of a property subject to DEP clean up requirements. The change must not be considered an "intensive use," but the bill does not define this term or specify who determines if the

use meets this criterion.

The bill specifically allows the reuse of mills and abandoned or underutilized sites to occur without having to obtain an exemption if:

1. the project renovates existing structures,
2. the new structure's footprint does not exceed the former's structure's historic footprint,
3. residential living space is above the 500-year flood elevations, and
4. the renovation complies with the National Flood Insurance Program.

## **BACKGROUND**

### ***Related Bills***

SB 271 (File 411) allows the DEP commissioner, regardless of any contrary state floodplain law, to waive state floodplain management laws for a proposed improvement or redevelopment of a property on which there is a mill, provided the improvement conforms to National Flood Insurance Program requirements.

sSB 885 (File 842) extends the sunset date for the CDA program that finances brownfield projects from July 1, 2010 to July 1, 2012.

### ***Legislative History***

The House referred the bill to the Appropriations Committee, which reported a substitute eliminating provisions:

1. expanding the range of costs that developers and municipalities can recover for cleaning up brownfields, specifying criteria for establishing immunity from liability for these costs, and setting deadlines by which brownfield remediators must act to recover costs;
2. limiting the remediation a developer must perform under a

covenant not to sue to the contamination within a property's boundaries; and

3. limiting liability for municipalities entering and inspecting property.

### **COMMITTEE ACTION**

#### Commerce Committee

Joint Favorable Substitute

Yea    20    Nay   0    (03/12/2009)

#### Planning and Development Committee

Joint Favorable

Yea    17    Nay   0    (04/13/2009)

#### Appropriations Committee

Joint Favorable Substitute

Yea    51    Nay   0    (04/27/2009)